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No. 22452

In the
United States Court of Appeals
For the Ninth Circuit

Carpenters Local 1273 of the United Brotherhood of Carpenters and Joiners of America, Construction General Laborers Local 85, Lane-Coos-Curry-Douglas Counties Building and Construction Trades Council, Oregon State Council of the United Brotherhood of Carpenters and Joiners of America,
Appellants,

vs.

WILLIS A. HILL, doing business as WILLIS A. HILL,
General Contractor,
Appellee.

APPELLEE'S BRIEF

Appeal from the United States District Court
for the District of Oregon

HONORABLE ROBERT C. BELLONI, *Judge*

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FILED

MAR 21 1968

DAILY JOURNAL OF COMMERCE

20

WM. B. LUCK, CLERK

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APPELLEE'S BRIEF

JURISDICTION

Appellee accepts appellants' statement of jurisdiction.

SUPPLEMENTAL STATEMENT OF THE CASE

Appellants' statement of the case is incomplete, and a supplemental statement is required:

This is an action for damages under § 303 of the Labor Management Relations Act (29 USC section 187) sustained as a result of conduct previously held by the National Labor Relations Board and this Court to constitute an unfair labor practice in violation of section 8(b)(4)(i)(ii)(A) of the Act. *Lane-Coos-Curry-Douglas Building Trades Council (Willamette General Contractors Ass'n)*, 155 NLRB 1115, 60 LRRM 1453 (1965), enf'd sub nom *NLRB v. Lane-Coos-Curry-Douglas BTC*, No. 20,783, 9th Cir., August 9, 1967 (per curiam).

Section 303 of LMRA provides that anyone injured by "conduct defined as an unfair labor practice in section 8(b)(4) * * * shall recover the damages by him sustained * * *" (Section 303 is set out in full in Appendix A, infra 19). Subsection (A) of section 8(b)(4) makes it an unfair labor practice to engage in picketing or other coercion or to induce a strike with an object of forcing an employer to enter into an agree-

ment prohibited by section 8(e) of the Act. (Material parts of these sections are quoted in Appendix A to appellants' opening brief.)

Appellants picketed¹ plaintiff's construction site commencing January 18, 1965, until enjoined by the federal district court on April 9, 1965.² The admitted purpose of the picketing was to force plaintiff to execute an agreement known as "Oregon State Building and Construction Trades Council Articles of Agreement" (Jt Ex 1, Tr 16, 28, 159-60, 171, 193). The agreement included the following clause:

"It is further agreed that no employee working under this Agreement need * * * cross any picket line or enter any premises at which there is a picket line authorized by the Council; or any other Building & Construction Trades Council or authorized by any Central Labor Council, or handle, transport or work upon or with any products declared unfair by any of such Councils." (Jt Ex 1)

Throughout this entire period, plaintiff was a "union contractor," i.e. he hired only union employees and was a party to the area labor agreements of the defendant Carpenters and the defendant Laborers (the only two trades he employs) (Tr 21-23). All of plaintiff's

1. In addition to the picketing, defendants refused to refer job applicants as required under the existing Carpenters and Laborers agreements (e.g. Tr 202-203).

2. The injunction was issued pursuant to proceedings brought by the Regional Director of the NLRB under section 10(1) of LMRA (29 USC section 160(1)). *Thomas P. Graham, Jr. v. Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council*, (D Or 1965, Civil No. 65-129).

subcontractors on the picketed job were also “union contractors”, and were known by defendants to be “union contractors” (Tr. 30, 158). Thus, the statements on the picket signs (P’s Ex 6) that working conditions were inferior to union conditions were untrue (Tr 199).

An unfair labor practice charge was filed against the defendant Council and was tried before a Trial Examiner of the Board, who found that the picketing violated section 8(b)(4)(i)(ii)(A) of the Act. On review, the Board agreed. *Lane-Coos-Curry-Douglas Building Trades Council (Willamette General Contractors Ass’n)*, 155 NLRB 1115, 60 LRRM 1453 (1965). When the Council refused to comply with the Board’s order, the Board petitioned this Court for enforcement. The case was briefed and argued. This Court affirmed and enforced the Board’s decision. *NLRB v. Lane-Coos-Curry-Douglas BTC*, No. 20,783, 9th Cir., August 9, 1967 (per curiam).

The picketing shut down plaintiff’s job for 2.7 months and caused a total composite job delay of approximately five months (Tr 26, 32, 37-38). This action seeks recovery of damages resulting from such delay. After hearing testimony and studying 13 exhibits, the trial court, sitting without a jury, found the four appellants jointly liable and assessed damages in the amount of \$11,500.

STATUTES INVOLVED

In addition to the statutes cited by appellants, Section 303 of the Labor Management Relations Act (29 USC § 187) is involved. It is set out in full in Appendix A, *infra* 19).

SUMMARY OF ARGUMENT

The record supports the trial court's conclusion that appellants violated Section 8(b) (4) (i) (ii) (A) of LMRA and the judgment for \$11,500 damages. The trial court's findings are sufficient for review of the judgment by this Court and comply with Rule 52(a) of the Federal Rules of Civil Procedure.

Argument

- 1. The record supports the trial judge's finding that appellants' conduct violated Section 8(b)(4)(i)(ii)(A) of the Act.**

Appellants picketed plaintiff for the admitted (Tr 16) purpose of obtaining plaintiff's signature on Joint Exhibit 1. This agreement contains clauses allowing an employee to refuse to cross "any picket line" and to refuse to handle, transport or work upon "any products declared unfair * * *." These clauses, and picketing to obtain them, were held to violate Section 8(b) (4) (i)-(ii) (A) of the Act by the Board and by this Court, which

enforced the Board's order, *NLRB v. Lane-Coos-Curry-Douglas BTC*, supra. Substantially identical clauses, and coercion to obtain them, have been held illegal in a long series of decisions which establish that such picket line clauses and clauses authorizing the refusal to handle "unfair" goods violate Section 8(e), that they are not within the construction industry proviso to 8(e), and that picketing to secure them violates 8(b)(4)(i) and (ii)(A):

Court decisions:

NLRB v. Carpenters, AFL-CIO, 382 F2d 593, (9th Cir 1967)

Drivers Local 695 v. NLRB, 361 F2d 547, 62 LRRM 2135 (DC Cir 1966)

NLRB v. Teamsters Local 294, 342 F2d 18, 58 LRRM 2518 (2d Cir 1965)

Teamsters Local 413 v. NLRB, 334 F2d 539 (DC Cir 1964); *cert den* 85 S Ct 264 (1964)

Decisions of the Board:

Cement Masons Local Union No. 97, AFL-CIO (Interstate Employers, Inc., et al), (1964) 149 NLRB 1127, 57 LRRM 1471, 1473

Los Angeles Building & Construction Trades Council (Portofino Marina), (1965) 150 NLRB No. 152, 58 LRRM 1315, 1317

Los Angeles Building and Construction Trades Council (Couch Electric Company, Inc., et al), (1965) 151 NLRB No. 46, 58 LRRM 1440

Drivers, Salesmen (etc.) Local Union No. 695 (etc.) (Madison Employers' Council), (1965) 152 NLRB No. 55, 59 LRRM 1131

Teamsters, Chauffeurs, (etc.) Local No. 386 (etc.) and California Association of Employers, (1965) 152 NLRB No. 83, 59 LRRM 1223

Los Angeles Building & Construction Trades Council, et al and Quality Builders, Inc., (1965) 153 NLRB No. 38, 59 LRRM 1364

Los Angeles Building and Construction Trades Council et al (Elmer E. Willhoite), (1965) 154 NLRB No. 55, 60 LRRM 1053

Bay Counties District Council of Carpenters, AFL-CIO, et al, and Jones and Jones, Inc. et al, (1965) 154 NLRB No. 120, 60 LRRM 1190

Local 300, Hod Carriers' and Construction Laborers' Union, etc. and Jones & Jones, Inc., (1965) 154 NLRB No. 142, 60 LRRM 1194

Appellants' present contentions were considered and rejected by this Court when it enforced the Board's order. They were reviewed in two briefs filed by the Board and one filed by plaintiff's association, and it is believed to be unnecessary to repeat those comments in detail here. The Board's reply brief, in particular, examined with great clarity appellants' contention that the construction industry proviso to section 8(e) is applicable; the proviso applies only to "the contracting or subcontracting of work" and not to a refusal to handle (even at jobsites) "any products declared unfair" — which

would include products produced off the jobsite.³ Furthermore, the picket line clause involved in this case would allow recognition of “any” secondary picket line and has nothing to do with the “contracting or subcontracting of work”.⁴ The construction industry proviso does not permit jobsite employees to boycott off-site employers by “unfair goods” clauses or to support secondary picket lines.

Appellants again contend that their picketing is lawful under *NLRB v. Mountain Pacific Chapter of Assoc. Gen. Con.*, 270 F2d 425 (9th Cir 1959); however, as the Board’s brief pointed out, cases such as *Mountain Pacific* are inapplicable because they deal with section 8(a)(3) in which *actual motivation* is generally the inquiry,⁵ whereas under section 8(e) the union’s motive is irrele-

3. “‘Hot cargo’ agreements in any form are prohibited by section 8(e). * * *

“Nor is the union insulated from the effect of section 8(b)(4)(ii)(A) by the ‘construction industry’ proviso to section 8(e). * * * the proviso * * * does not sanction a ‘boycott against suppliers who do not work on the job site.’ * * *.” *NLRB v. International Bro. of Teamsters, Local 294*, 342 F2d 18 at 21 (2d Cir 1965). See also *Essex County District Council of Carpenters v. NLRB*, 332 F2d 636, 640 (3rd Cir 1964). The legislative history showing the inapplicability of the 8(e) proviso was reviewed in the Board’s brief to this Court, p 4.

4. “* * * To the extent that the clause would protect such refusal to cross [a secondary picket line], it would then be authorizing a secondary strike, and would *pro tanto* be void under § 8(e) of the Act * * *.” *Truck Drivers Local No. 413 v. NLRB*, 334 F2d 539 at 543 (DC Cir 1964) (Emphasis in original)

Appellants’ broad claim (Apps Br 15) — that plaintiff’s position that a clause permitting refusal to cross “any” picket line violates 8(e) is “utterly without support” — is astonishing since this Court has at least twice held such a clause to violate 8(e). *NLRB v. Carpenters, AFL-CIO*, 382 F2d 593 (9th Cir 1967 per curiam), *National Labor Relations Board v. Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council*, *supra*.

5. See *Local 357, Teamsters v. NLRB*, 365 US 667, 81 S Ct 835, 6 Led 2d 11 (1961); *American Ship Building Company v. NLRB*, 380 US 300, 311-313, 85 S Ct 955, 13 Led 2d 855 (1965).

vant: "the contract must be tested by its terms." *Truck Drivers Local 413 v. NLRB*, 334 F2d at 542 (DC Cir 1964); *Meat and Highway Drivers Union Local 710 v. NLRB (Wilson & Co.)*, 335 F2d 709, 716 (DC Cir 1964). Appellants do not deny that the *terms* of the agreement now in question cover secondary as well as primary conduct. Consequently, we are not concerned with presumptions about motivation (as the Board was in *Mountain Pacific*); the contract covers illegal conduct on its face and thereby violates section 8(e).

2. The evidence supports the trial court's assessment of damages sustained by plaintiff.

Appellants' picketing delayed plaintiff's job approximately five months and caused plaintiff damages of the kind usually associated with such construction delay: Wasted general overhead, wasted jobsite overhead, lost income and miscellaneous specific costs attributable to the delay. Throughout the proceedings, plaintiff has recognized the difficulty, if not the impossibility, of measuring his damages with mathematical certainty. However, it is well settled that the trier of the facts is not for that reason prevented from determining the amount of damages sustained.

"* * * * * Damages are not rendered uncertain because they cannot be calculated with absolute exactness. It is sufficient if a reasonable basis of computation is afforded, although the result be only approximate.' This, we think, was a correct statement

of the applicable rules of law. Furthermore, a defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff, is not entitled to complain that they cannot be measured with the same exactness and precision as would otherwise be possible. [citations omitted]” (*Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 US 359 at 379, 47 S Ct 400, 71 L Ed 684 (1926))

This principle has often been applied in delay damage cases, *e.g.*, *Needles for Use and Benefit of Needles v. United States*, 101 Ct Cl 535, 618 (1944); *George A. Fuller Co. v. United States*, 63 F Supp 765 (Ct Cl 1946); *Houston Ready-Cut Houses Co. v. United States*, 96 F Supp 629 (Ct Cl 1951); *Chalender v. United States*, 119 F Supp 186 (Ct Cl 1954).

The evidence shows in detail the usual elements of plaintiff’s delay damages: (1) General overhead was wasted in the amount of approximately \$10,000 or 5.14% of the approximately \$200,000 gross income lost because of appellants’ picketing, (P’s Exs 13, 14, 16, Tr 55-67, 217-21). See, *e.g.*, *Sachs v. United States*, 63 F Supp 59, 71 (Ct Cl 1945). (2) Wasted job overhead and pay increases totaled about \$2,700 (P’s Ex 15, Tr 68-76, 244). (3) Lost profits amounted to approximately \$4,200, based on plaintiff’s three-year profit rate of 2.18% (P’s Ex 13, Tr 76-77, 221-25, 244). (4) The specific engineering cost of preparing a “critical path analy-

sis” in the amount of \$1,050 was also wasted (P’s Ex 18, Tr 77-78, 180-82). The issue of damages was briefed in detail to the trial court, and those briefs are in the record on appeal for this Court’s review.

Appellants complain that the trial court “rounded off” plaintiff’s claim and *reduced* it to \$11,500 (App Br 17); however, this merely concedes that the evidence supported a substantially greater award. They complain that an accrual accounting method should have been used (App Br 17-18); however, the evidence shows that the amount of plaintiff’s damages are nearly identical whether the cash basis or accrual basis is employed (Tr 224, 235, 244, P’s Exs 21, 13). Appellants decline to argue any theory of damages to this Court (or, more accurately, their theory, argued in the trial court, that a five-month construction delay causes no damage at all), but simply refer to their trial court brief on damages (App Br 18); plaintiff’s trial court reply brief on damages fully answers their contentions (p 79 of Clerk’s Supplemental Record on Appeal). A review of these briefs displays the careful consideration given the question of damages by the trial court and the evidence supporting the court’s award.

3. The trial court’s findings of fact and conclusions of law meet the requirements of Rule 52(a).

The pertinent portion of Rule 52(a) states:

“(a) Effect. In all actions tried upon the facts without a jury * * * the court shall find the facts specially and state separately its conclusions of law thereon * * *. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses * * *.”

The trial court entered the following findings and conclusions:

“FINDINGS OF FACT.

“I.

“Plaintiff is a sole proprietorship engaged as a general contractor in the construction industry and affects interstate commerce. Defendants are and at all times herein mentioned have been labor organizations representing employees in an industry affecting commerce and maintaining their principal offices in the State of Oregon within the District of this Court.

“II.

“Commencing on January 18, 1965, defendants Carpenters Local 1273 of the United Brotherhood of Carpenters and Joiners of America, Construction General Laborers Local 85, Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council, and Oregon State Council of the United Brotherhood of Carpenters and Joiners of America, picketed plaintiff's construction site in Eugene, Oregon, where he was building a book store for the University of Oregon Student Co-op Association, and induced and encouraged a strike of employees working on that job site. An object of such picketing was to require plaintiff to execute a contract designated 'Oregon State Building and Construction Trades Council Articles of Agreement,' which includes the following provision:

'It is further agreed that no employee working under this Agreement need * * * cross any picket line or enter any premises at which there is a picket line authorized by the Council; or any other Building & Construction Trades Council or authorized by any Central Labor Council or handle, transport or work upon or with any product declared unfair by any of such Councils.'

Such picketing continued until April 9, 1965, when enjoined by this Court upon proceedings brought by the National Labor Relations Board.

"III.

"Plaintiff has presented no evidence that defendant Oregon State Council of Laborers has been in any way involved in the allegations charged.

"IV.

"As a direct and proximate result of the actions of defendants as above described, plaintiff has been damaged in the amount of \$11,500.00.

"CONCLUSIONS OF LAW

"I.

"This Court has jurisdiction of this action by virtue of § 303 of the Labor-Management Relations Act (29 U.S.C. § 187(b)).

"II.

"This case is dismissed as against defendant Oregon State Council of Laborers.

"III.

"The Agreement designated 'Oregon State Building and Construction Trades Council Article of Agreement' violates § 8(e) of the Labor-Management Relations Act (29 U.S.C. § 158(e)), and there-

fore defendants' picketing, which had as an object forcing plaintiff to enter into said Agreement, violated § 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act.

“IV.

“Plaintiff shall have judgment for damages against defendants Carpenters Local 1273 of the United Brotherhood of Carpenters and Joiners of America, Construction General Laborers Local 85, Lane - Coos - Curry - Douglas Counties Building and Construction Trades Council, and Oregon State Council of the United Brotherhood of Carpenters and Joiners of America, in the amount of \$11,-500.00.”

The rule does not comment on the degree of particularity required in findings. Appellants contend that the findings must include “subsidiary findings as to the evidence produced and detailed facts existing in the record” (App Br 7). Neither the rule nor the authorities cited by appellants so require. In the words of the Committee which drafted Rule 52(a):

“* * * the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over-elaboration of detail or particularization of facts. * * *” Committee Note of 1946 to subdivision (a), quoted in 5 Moore’s Federal Practice (2d ed) § 52.01 at p 2606.

As stated by Judge Learned Hand:

“* * * Findings should not be discursive; they should not state the evidence or any of the reason-

ing upon the evidence; they should be categorical and confined to those propositions of fact which fit upon the relevant propositions of law. * * *” *Peterson Lighterage & Towing Corp. v. New York Central R. Co.*, 126 F2d 992, 996 (2d Cir 1942); see also *Trentman v. City and County of Denver*, 236 F2d 951, 953 (10th Cir 1956).

This Court has stated the rule as follows:

“* * * [T]he federal rule relating to findings of a trial court does not require the court to make findings on all facts presented or to make detailed evidentiary findings; if the findings are sufficient to support the ultimate conclusion of the court they are sufficient. * * * The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision and whether they are supported by the evidence. * * *” *Carr v. Yokohama Specie Bank, Limited*, 200 F2d 251, 255 (9th Cir, 1952) see also *Stone v. Farnell*, 239 F2d 750, 758 (9th Cir, 1956).⁶

This case does not involve the resolution of complex or technical issues. *It is a simple case*: Appellants picketed to force plaintiff to sign the agreement; the agreement violates § 8(e); plaintiff was damaged by the picketing. The fact of the picketing and its purpose is admitted; that this agreement violates § 8(e) was previously determined by this Court; the damages are typical of those incurred in a delay damage claim. Only

6. See 2(B) Barron & Holtzoff, § 1127 (Wright Ed. 1961); 6 Moore's Federal Practice ¶ 52.05 06 (2d ed).

one employer and only one jobsite were involved. Although detailed findings are appropriate in a complex case with numerous issues,⁷ this is not such a case.

Appellants contend that the trial court's findings on damages are inadequate, because “* * * where total damages awarded in a given case are made up of several distinct elements the trial court must give a breakdown of the various items it has included in its total award in order to comply with Rule 52(a) * * *” (App Br 11); however, not one of the three cases principally relied on support such a rule. Appellants cite *Hatahley v. United States*, 351 US 173, 76 S Ct 745, 100 L Ed 1065 (1956), which was an action under the Federal Tort Claims Act brought by 30 Navajo Indians claiming that federal agents had wrongfully rounded up and destroyed their horses and burros. The trial judge awarded the 30 plaintiffs jointly \$100,000 damages. The Supreme Court said:

“* * * But it is necessary in any case that the findings of damages be made with sufficient particularity so that they may be reviewed. Here the District Court merely awarded the amount prayed for in the complaint. There was no attempt to allot any particular sum to any of the 30 plaintiffs, who owned varying numbers of horses and burros. *There can be no apportionment of the award among the petitioners unless it be assumed that the horses were*

7. *Kelley v. Everglades Drainage District*, 319 US 415 (1943, per curiam) (bankruptcy — municipal debt readjustment plan), and *Deal v. Cincinnati Board of Education*, 369 F2d 55 (6th Cir, 1966) (civil rights — de facto segregation — intent or neglect of school board), cited by appellants, are examples.

valued equally, the burros equally, and some assumption is made as to the consequential damages and pain and suffering of each petitioner. These assumptions cannot be made in the absence of pertinent findings, and the findings here are totally inadequate for review. The case must be remanded to the District Court for the appropriate findings in this regard.” 351 US at 182, emphasis added.

The defects in the *Hatahley* findings are not present here—damages here need not be allocated among a large number of plaintiffs. Appellants cite *Dwyer v. Socony-Vacuum Oil Co.*, 276 F2d 653 (2d Cir 1960) (per curiam), which was an admiralty action for personal injury;⁸ there, a lump sum award of \$5,000 to the plaintiff was held sufficient on appeal. Finally, appellants cite *Smith v. Dental Products Co.*, 168 F2d 516 (7th Cir 1948), which is readily distinguishable. There, a master had been appointed to hear evidence on damages. After listening to testimony, he said that he would study the record and might wish more evidence of the amount of damages. Before making any findings or report, the master died. The trial court heard no additional evidence and made no *findings* at all on damages—it simply entered a judgment for \$60,000 as lost profits and damages. The decision on appeal was based on the involvement of the master, the fact that the court

8. The Federal Rules of Civil Procedure do not apply to proceedings in admiralty (Rule 81(a)(1)).

heard no evidence (and could not judge demeanor and credibility), and the failure to enter any findings at all—all factors not present in this case.

Individual review of other cases cited by appellants is believed to be of little value. “[T]he degree of particularity must necessarily be gauged to the case at hand * * * ” (5 Moore’s Federal Practice (2d ed) § 52.05 [1], p 2644, fn 9). Thus, appellants’ cases involving an absence of any findings,⁹ or a general conclusionary finding on a legal issue,¹⁰ or which omit a crucial finding necessary for liability,¹¹ are not applicable here.

It is not uncommon to have findings of damages in a lump sum amount, particularly when relatively small amounts are involved, and such findings are adequate on appeal *United States v. Pendergrast*, 241 F2d 687, 689 (4th Cir 1957) (per curiam); *Summerbell v. Elgin Nat. Watch Co.*, 215 F2d 323, 324 (DC Cir 1954).

Neither appellants nor this Court have been handicapped by the conciseness of the trial court’s findings, which form an adequate basis for review in this simple case. Appellants do not contend that the trial court con-

9. E.g., *Smith v. Dental Products Co.*, supra.

10. E.g., *Commissioner of Internal Revenue v. Duberstein*, 363 US 278, 80 S Ct 1190, 4 L ed 2d 1218 (1960) (where the trial court merely concluded that the transfer was a “gift” — a legal characterization which requires a factual basis); see, e.g., *National Lead Co. v. Western Lead Products Co.*, 291 F2d 447 (9th Cir 1961) (conclusory findings on the state of prior art or the lack of invention).

11. E.g., *Woods Construction Co. v. Pool Construction Co.*, 314 F2d 405 (10th Cir 1963).

sidered improper elements of damages, nor has lack of specificity in the findings in any way prevented appellants from determining whether the case presents a question worthy of appeal. See *United States v. Pendergrast*, *supra*; cf *George v. United States*, 295 F2d 310 (7th Cir 1961). A determination of whether the trial court's findings on either liability or damages was "clearly erroneous" can readily be made from the record. Thus, no useful purpose would be accomplished in this case by requiring more detailed findings.

CONCLUSION

For the foregoing reasons, the judgment of the trial court should be affirmed.

Respectfully submitted,

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APPENDIX "A"**Additional Statute Involved**

"*Sec. 303(a)* It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act as amended.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

CERTIFICATE

I certify that, in connection with the preparation of the foregoing brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Attorney